

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

BRIAN GRIMSLEY,

Petitioner(s),

vs.

WARDEN, NORTH CENTRAL
CORRECTIONAL INSTITUTION,

Respondent(s).

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Case Number: 1:05cv416

District Judge Susan J. Dlott

ORDER

This matter is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to United States Magistrate Judge Timothy S. Black. Pursuant to such reference, the Magistrate Judge reviewed the pleadings and filed with this Court on February 6, 2007 Report and Recommendations (Doc. 8). Subsequently, the Petitioner filed objections to such Report and Recommendations (Doc. 9).

The Court has reviewed the comprehensive findings of the Magistrate Judge and considered de novo all of the filings in this matter. Upon consideration of the foregoing, the Court does determine that such Recommendations should be adopted.

Accordingly, Petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. §2254 (Doc. 1) is DENIED with prejudice.

A certificate of appealability will not issue with respect to petitioner's sole claim for relief, which was addressed on the merits herein, because petitioner has not made a substantial showing that he has stated a "viable claim of the denial of a constitutional right" that is "adequate to deserve encouragement to proceed further." *See Slack v. McDaniel*, 529 U.S. 473,

475 (2000) (citing *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983); *see also* 28 U.S.C. § 2253 (c); Fed. R. App. P. 22 (b)).

With respect to any application by petitioner to proceed on appeal *in forma pauperis*, the court certifies pursuant to 28 U.S.C. § 1915 (a)(3) that an appeal of this Order adopting the Report and Recommendation would not be taken in “good faith,” and therefore DENIES petitioner leave to appeal *in forma pauperis* upon a showing of financial necessity. *See* Fed. R. App. P. 23 (a); *Kincade v. Sparkman*, 117 F.3d, 949m 952 (6th Cir. 1997).

IT IS SO ORDERED.

s/Susan J. Dlott
Susan J. Dlott
United States District Judge